Published on *The National Law Review* https://natlawreview.com

Rescission of Regulations Without Notice and Comment? What's Next for Regulated Industries in the Deregulation Climate

Article By:

Christina Manfredi McKinley

Dominique L. Casimir

We previously wrote about President Trump's February Executive Order identifying deregulation as a top administration priority (here and here). That Executive Order, 14219 (the "Deregulation EO"), directed all executive departments and agencies to identify regulations falling within certain enumerated categories of regulations. More recently, on April 9, 2025, the President issued a memorandum providing further direction to executive departments and agencies regarding implementation of the Deregulation EO (available here). This memorandum addresses how the President envisions that Executive Branch agencies will go about rescinding regulations. And—spoiler alert—the vision for rescinding regulations is a departure from the typical notice-and-comment process.

The Specifics

Emphasizing adherence to recent Supreme Court decisions and the use of the "good cause" exception in the Administrative Procedure Act for expedited rulemaking (that is, rulemaking/rescission without the constraints of notice and comment), the memorandum instructs agencies, *first*, as part of the review-and-repeal efforts required by the Deregulation EO, to assess each existing regulation's lawfulness under the following United States Supreme Court decisions:

1. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024);
2. *West Virginia v. EPA*, 597 U.S. 697 (2022);
3. *SEC v. Jarkesy*, 603 U.S. 109 (2024);
4. *Michigan v. EPA*, 576 U.S. 743 (2015);
5. *Sackett v. EPA*, 598 U.S. 651 (2023);
6. *Ohio v. EPA*, 603 U.S. 279 (2024);
7. *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021);
8. *Students for Fair Admissions v. Harvard*, 600 U.S. 181 (2023);
9. *Carson v. Makin*, 596 U.S. 767 (2022); and
10. *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020).

Second, most significantly, the memorandum instructs agencies to then begin the rescission of any regulations they identify as unlawful under step one, *without* undertaking public notice and comment. The memorandum instead directs agencies to rely on the Administrative Procedure Act's "good cause" exception. That exception allows agencies to bypass the notice-and-comment process when notice and comment is "impracticable, unnecessary, or contrary to the public interest." The memorandum asserts that leveraging the "good cause" exception is appropriate because retaining and enforcing facially unlawful regulations is contrary to the public interest such that notice-and-comment proceedings are unnecessary in those instances where repeal of a regulation is necessary to ensure consistency with Supreme Court rulings.

The memorandum directs agencies to begin the repeal process immediately following the 60-day review period specified in the February 19 Deregulation EO (*i.e*., April 20, 2025). It further directs agencies, within 30 days of the review period's expiration (*i.e*., May 20, 2025), to submit to the Office of Information and Regulatory Affairs a one-page summary of each regulation that the agency initially identified as falling within one of the categories specified in the Deregulation EO but which is *not* being targeted for repeal, explaining the basis for the decision not to repeal that regulation.

The Import

In light of this memorandum, industries should brace for potentially significant regulatory changes as agencies undertake the mandated review-and-repeal process.

Chief among the concerns we anticipate from this memorandum is uncertainty. In the first place, the plan for such large-scale use of the good-cause exception will likely draw legal challenges. Regulations promulgated with notice-and-comment procedures typically require notice and comment for their rescission. Legal challenges bring uncertainty as cases wind their way through the courts.

Affected businesses could also face uncertainty with respect to their regulatory compliance costs. For example, if a business spent significant sums to comply with a regulation that is now targeted for rescission, the business will experience a period of budgetary uncertainty until it is known whether that particular regulation will, in fact, be rescinded.

Conversely, industries that benefit from certain regulations or have invested significantly in compliance may want to proactively engage with relevant agencies to ensure these regulatory schemes are preserved. In our earlier writings, we suggested that affected businesses look for ways to proactively engage with agencies in identifying regulations for either rescission or retention, even though the Deregulation EO did not provide a direct pathway for such engagement. In the weeks since its issuance, both the Office of Management and Budget and the Federal Communications Commission have opened specific dockets requesting the public's comment on regulations that might be targeted. (*See* here and here.) Potentially affected industries should take advantage of these opportunities to engage with the administration about the regulations that affect it.

Staying proactive and informed about the regulatory landscape is crucial for businesses to navigate the potential opportunities and risks presented by this new directive. Blank Rome's team of lawyers is available to guide you through these regulatory changes and help you address the implications for your industry.

National Law Review, Volume XV, Number 106

Source URL:https://natlawreview.com/article/rescission-regulations-without-notice-and-comment-whats-next-regulated-industries